REMARKS

Claims 1-11 are pending in the application.

I. CLAIM REJECTIONS - 35 U.S.C. § 103

A. Claims 1-11

Claims 1-11 were rejected under 35 U.S.C. § 103(a) as being unpatentable over the combined teachings of Everingham et al. (U.S. Patent No. 3,964,893), Moore (U.S. Patent No. 5,021,247), and Kulik (U.S. Patent No. 6,458,747).

The Examiner states:

> One of ordinary skill in the art would be motivated to combine these references because they disclose components which may be added to fertilizer compositions to enhance the effectiveness of agricultural products. Thus, it would have been *prima facie* obvious to the ordinary artisan at the time the invention was made to have combined a nitrogen fertilizer material, a surfactant, and a metal salt, in a single composition because the prior art teaches the utility of combining nitrogen containing fertilizer materials such as ammonium sulfate or isobutylene diurea with micronutrient materials such as metal salts. Everingham et al. teach that such fertilizer compositions would exhibit moss inhibiting effects, in addition to being active as fertilizers.

PTO Paper dated May 5, 2004 at page 3.

Applicant respectfully traverses this rejection. Everingham discloses a lawn moss composition comprising a granular ferric ammonium sulfate-ammonium sulfate double salt. Table II in U.S. Patent No. 3,964,893 to Everingham shows that he was only able to affect the moss, but was not able to completely control the lawn moss. Moreover, Everingham preferably applies the double salt to turf grass in granular form (col. 1, lines 30-31). In contrast, Applicant claims a liquid composition for controlling lawn moss (see claim 1). Moreover, the metal

containing salt is selected from copper sulfate, zinc sulfate, and iron sulfate. Iron sulfate as claimed is not the same as iron ammonium sulfate which is disclosed in Everingham.

Moore discloses a method of preparing a high integrity natural nitrogenous granule for agriculture for use as plant nutrients and animal feed supplements. Further, Moore teaches that some of the natural nitrogenous material found to be effective in preparing granular foods is: poultry waste, poultry feather meal, swine hair meal, seafood meal - including fish meal, crab meal and shrimp meal, blood meal, bone meal, and soybean meal (col. 6, lines 1-6). Moore is not only unconcerned with lawn moss control, but shows no recognition to the problem of controlling lawn moss. In contrast, Applicant's claims are directed to a liquid composition for controlling lawn moss and not to agriculture for use as a plant nutrient and animal feed.

Unlike Applicant's claimed invention, Kulik is not even directed to lawn moss or controlling it. Rather, Kulik discloses a process for making a slow releasing fertilizer comprising agricultural materials, preferably including agricultural waste materials in urea. Kulik further teaches that at least some of the components, e.g., agricultural materials, are high in tannins. The agricultural materials include alfalfa, other legumes, raisin stems, other fruit stems, rice bran, cotton seed and nut shells such as walnut shells. Kulik further teaches that the compositions take the form of fertilizer pellets. Conversely, Applicant discloses and claims a composition for controlling lawn moss that is a liquid containing a nitrogen fertilizer, a surfactant or wetting agent, and a metal containing salt.

There is no suggestion in the references that they be combined as suggested by the Examiner. Absent a suggestion, there would be no reason why one skilled in the art, who was faced with the same problem confronting Applicant of providing an effective liquid composition for controlling moss and who had no prior knowledge of Applicant's claimed composition,

would consult the particular combination of references as suggested by the Examiner. A person skilled in the art who was looking to make a liquid moss control composition with a surfactant or wetting agent to sufficiently wet the surface of the moss in order to enhance the biocidal action of the solution would not look to a reference like Moore or Everingham alone or in combination because neither reference, as recognized by the Examiner, teaches surfactants. While Kulik teaches surfactants, Kulik is not concerned nor does he identify with the problem of formulating a liquid composition to control lawn moss; therefore, a person skilled in the art would not make this combination as suggested by the Examiner. "Lacking of identification of the problem facing the inventor is basis for finding that references could not have suggested a solution to the problem." *In re Shaffer*, 229 F.2d 476 (C.C.P.A. 1956).

If two references relate to different problems, or the problem to be solved has not been identified, a suggestion to combine may not be indicated. See *In re Wright*, 848 F.2d 1216 (Fed. Cir. 1988) (differences between the problem solved by the invention and those solved in the prior art may defeat the rejection). Applicant submits Moore is not only unconcerned with lawn moss control, but shows absolutely no recognition to the problem of controlling lawn moss with a herbicidal amount of a granular ferric ammonium sulfate-ammonium sulfate double salt as exhibited by Everingham. Rather, Moore is concerned with forming natural nitrogenous materials, wastes, and by-products into high integrity granules by heating under alkaline conditions until they develop adhesive properties (see col. 2, lines 35-39). Kulik shows absolutely no recognition to the problem of controlling moss. Rather, Kulik is directed at solving the problem of formulating a fertilizer which is converted into a slow release form when mixed with organic soil additives, in particular alfalfa (col. 2, lines 25-29). Therefore, one of skill

would be less inclined to use these references alone or combination as suggested by the Examiner.

In addition, Applicant further submits there would be no reason or expectation of success because Kulik and Moore do not relate to treating moss control. So while one of skill as alleged by the Examiner may add the components to fertilizer compositions to enhance the effectiveness of agricultural products, there is no expectation of success with regard to whether such composition would control lawn moss or its effectiveness since Moore is directed to plant nutrition such as fertilizer, secondary nutrients, micronutrients in animal feed supplements (see Moore, col. 3-4) and Kulik is related to soil additive compositions. Neither reference suggests or teaches whether such composition would be effective against moss control. Therefore, claims 1-11 are not obvious and are patentably distinct from the combination of Everingham, Moore and Kulik. Applicant respectfully requests this rejection be withdrawn.

II. CONCLUSION

No fees or extensions of time are believed to be due in connection with this amendment; however, consider this a request for any extension inadvertently omitted, and charge any additional fees to Deposit Account No. 26-0084.

Reconsideration and allowance is respectfully requested.

Respectfully submitted,

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